

Message Text

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DRAFTED BY L/AF:MASPIEGEL:AF/E:HRMELONE:JR

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TO AMEMBASSY ADDIS ABABA

INFO AMCONSUL ASMARA

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E.O. 11652: N/A

TAGS: BDIS, EIND, ET

SUBJECT: POSSIBLE TRADEMARK INFRINGEMENT

1. DEPT CONTACTED BY UNION CARBIDE CORP. (UCC) WHICH HAS ABANDONED EARLIER DESIRE TO ESTABLISH BATTERY MANUFACTURING PLANT IN ETHIOPIA BUT IS STILL IMPORTING BATTERIES FROM SINGAPORE FOR SALE THERE. UCC COMPLAINED THAT UNITED ABILITIES CO. HAS BEGUN MANUFACTURING BATTERIES IN ETHIOPIA AND MARKETING SUCH UNDER NAME AND APPEARANCE CONFUSINGLY SIMILAR TO EVEREADY TRADEMARK OWNED BY UCC. (BATTERIES HAVE SAME RED, BLUE, GREY COLOR COMBINATION; SIMILAR PLACEMENT OF EASILY-CONFUSED BRAND NAMES "EVEREADY" AND "EVERLIGHT"; SIMILAR BLUE CAT ON LABEL; LATTER ESPECIALLY CONFUSING AS ILLITERATE BUYERS REPORTEDLY USE AMHARIC WORD FOR CAT WHEN ORDERING BATTERIES.) EFFORTS TO ARRANGE MATTER WITH UNITED ABILITIES HAVE BEEN UNSUCCESSFUL AND UCC HAS ENGAGED ASMARA LAWYER TO PREPARE FOR LEGAL ACTION

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IN ETHIOPIAN COURTS IF DIPLOMATIC APPROACH, WHICH UCC

SOLICITED, IS UNSUCCESSFUL.

2. UCC CLAIMS TO HAVE WON A PREVIOUS LAWSUIT IN ETHIOPIA AGAINST ANOTHER COMPANY WHICH WAS IMPORTING BATTERIES UNDER LABEL SIMILAR TO EVEREADY. HOWEVER, SINCE IN PRESENT CASE BATTERIES ARE LOCALLY MANUFACTURED BY A FIRM EMPLOYING THE HANDICAPPED UNDER AEGIS HAILE SELASSIE I FOUNDATION AND WITH APPARENT BLESSINGS OF EMPEROR, UCC IS RELUCTANT TO BRING SUIT IF ANOTHER AVENUE AVAILABLE TO STOP TRADEMARK INFRINGEMENT. DEPT CONCURS DIPLOMATIC RATHER THAN LEGAL APPROACH MAY BE PREFERABLE.

3. TREATY OF AMITY AND ECONOMIC RELATIONS, ART. IX(2), APPEARS TO PROTECT TRADEMARK IF UCC HAS COMPLIED WITH APPROPRIATE REGISTRATION FORMALITIES; ASSUME FROM REPORTED SUCCESS IN ASMARA COURT ACTION IT HAS DONE SO.

4. IN EMBASSY DISCRETION, BELIEVE BEST MANNER OF PROCEEDING WOULD BE TO NOTE PROBLEM AND TREATY PROVISION IN LOW KEY MANNER WITH MFA, PERHAPS WITH GENTLE HINT THAT SHOULD UCC NOT FEEL ITSELF ADEQUATELY PROTECTED IT COULD BRING LAWSUIT DIRECTLY. ADVISE. RUSH

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